UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,409	09/04/2003	Timothy M. Keiser		6575

7590   01/28/2009

TIMOTHY M. KEISER
1322 WELLESLEY AVENUE, #5
LOS ANGELES, CA 90025

EXAMINER
GRAHAM, CLEMENT B

ART UNIT	PAPER NUMBER
3696	

MAIL DATE	DELIVERY MODE
01/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/655,409	KEISER ET AL.
	Examiner	Art Unit	
	Clement B. Graham	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>04 March 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
      closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>20-32,34,38-43 and 97-143</u> is/are pending in the application.
      4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>20-32,34,38-43 and 97-143</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
      Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
      Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
      a)☐ All b)☐ Some * c)☐ None of:
            1.☐ Certified copies of the priority documents have been received.
            2.☐ Certified copies of the priority documents have been received in Application No. _____.
            3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
                  application from the International Bureau (PCT Rule 17.2(a)).
      * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08)
      Paper No(s)/Mail Date <u>6/4/04, 7/26/04, 1/27/05</u>.

4)☐ Interview Summary (PTO-413)
      Paper No(s)/Mail Date. _____
5)☐ Notice of Informal Patent Application
6)☐ Other: _____

DETAILED ACTION

1. Claims 20-32, 34, 38-43, 97-143 remained pending in this application and claims 33, 35-37, and 44-96 has been cancelled.

2.   *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 20, 98, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent a method claim must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Diamond v.* Diehr, 450 U.S. 175, 184 (1981); *Parker v.* Flook, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v.* Benson, 409 U.S. 63, 70 (1972); *Cochrane v.* Deener, 94 U.S. 780, 787-88 (1876)). A method claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 20, 98 fail to meet the above requirements since there is not a sufficient tie to another statutory class.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 20-32, 34, 38-43, 97-143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (Hereinafter Hunt Patent No. 5,724,524) in view of Kiron et al (Hereinafter Kiron Patent No. 6, 088, 685).

5.   Claims 20-32, 34, 38-43, 97-143, are rejected under 35 U.S.C. 102(e) as being anticipated by Hereinafter over Hunt et al (Hereinafter Hunt Patent No. 5,724,524).

As per claim 20, Hunt discloses a method for trading a financial instrument comprising:

receiving at a computer device least one order to buy or sell the instrument, and executing a trade on the instrument at the determined price. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

Hunt fail to explicitly teach the financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post-release stage determining a price for the instrument based at least in part on the development stage of the item at a time of a trade.

However Kiron discloses identifying a group of securities, separating the group of securities into at least one subset of securities satisfying a predetermined criteria, creating an open ended financial product having a fixed number of outstanding shares over a predetermined period of time and a portfolio comprising of securities within the subset of securities, identifying from the group of securities a revised subset of securities satisfying the predetermined criteria, changing the securities comprising the portfolio in response to the identifying of the revised subset of securities, determining in real time the price of the financial product based on a user-defined method of weighting the securities comprising the portfolio, and outputting an indication of the real time determined price of the financial product in a humanly readable format.(note abstract and see column 8 lines 11-51 and column 7 lines 7-24).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hunt to include financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post-release stage determining a price for the instrument based at least in part on the development stage of the item at a time of a trade taught by Kiron in order to produce a price that account for the creation phases of the product.

As per claim 21, Hunt discloses wherein the item comprise a movie and the price of the instrument in a pre-release stage is based at least in part on estimated box office revenues of the movie and in a release stage the price of the instrument is based at least in part on actual box office revenues of the movie. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 22, Hunt discloses wherein the item has an undetermined release date, the method further comprising fixing the release date for the item after the execution of the trade. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 23, Hunt discloses re-leas date wherein in a pre-release stage the price of the instrument is based at least in part on estimated revenues associated with the item and wherein in a release stage the price of the instrument is based at least in part on actual revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 24, Hunt discloses wherein the plurality of stages of development associated with the item comprise a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with the pre-release stage of the item. (Note abstract and see column 5 lines 15-40

and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 25, Hunt discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 26, Hunt discloses wherein the instrument is traded in an initial offering and the price of the instrument is based at least in part on a number of shares issued in the initial offering for the instrument. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 27, Hunt discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 28, Hunt discloses wherein the item is a movie in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and historic multiplier for total gross revenue. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 29, Hunt discloses further comprising triggering an automatic ghost trade for the instrument. (Note abstract and see column 5 lines 15-40 and

column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 30, Hunt discloses wherein
triggering the automatic ghost trade comprises:
retrieving a buy probability constant;
generating a random trade constant. placing a buy order when the buy probability constant exceeds the random trade constant ; and placing a sell order when the buy probability constant does not exceed the random trade constant. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 31, Hunt discloses wherein the determining the price of the instrument comprises:
determining a buy-sell imbalance between tore buy orders and t4ae sell orders for the instrument; and
computing a price increase or decrease for the instrument based on the buy-sell imbalance. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 32, Hunt discloses wherein the price of the instrument is increased or decreased incrementally based at least in part on a security price increment constant. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 34, Hunt discloses further comprising:
a security break threshold to the computed price increase or decrease and increasing or decreasing the price of the of the instrument based at least in part on a security break increment when the increase or decrease exceeds the security break threshold . (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3

lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see
column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 38, Hunt discloses further comprising:
comparing a stock halt threshold to the computed price increase or decrease and
halting trading when the computed price increase or decrease exceeds the stock halt
threshold. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and
see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market
price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 39, Hunt discloses wherein trades are executed in cycles each cycle
having a market price associated therewith and wherein the price of the instrument is
determined by increasing or decreasing the market price of a previous cycle by the
computed price increase or decrease. (Note abstract and see column 5 lines 15-40 and
column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing
a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 40, Hunt discloses further comprising storing trade volume
information and trade price information for each trade order for t4i-e a plurality of
instruments. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25
and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set
market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 41, Hunt discloses further comprising:
receiving a query for requesting trade volume statistics for a selected instrument;
analyzing the stored trade volume information in response to the received query;
and generating and displaying the trade volume statistics for the selected
instrument in response to analyzing the stored trade volume information(Note
abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3
lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see
column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 42, Hunt discloses further comprising:
receiving a query for requesting buy versus sell volume statistics for a selected
instrument;

analyzing the stored trade volume information and the stored trade price information in response to the received query; and

generating and displaying the buy versus sell statistics for the selected instrument in response to the analyzing the stored trade volume information and the stored trade price information. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 43, Hunt discloses further comprising:

storing a plurality of categories of trade information relating to the plurality of trade orders;

receiving a query for requesting statistics for a selected category in a selected instrument analyzing stored categories of trade information in response to the received query; and generating and displaying statistical information for the selected category in the selected instrument in response to the analyzing the stored categories of trade information. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 97, Hunt discloses wherein the item is at least one of a product, a movie, and a service company. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 98, Hunt discloses a method comprising:

receiving at a computer device a request for information associated with at least one derivative financial instrument and communicating a price for the at least one instrument in response to the request. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

Hunt fail to explicitly teach instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post release stage; and the price determined based at least in part on the item being in a pre-release development stage at a time of a trade.

However Kiron discloses identifying a group of securities, separating the group of securities into at least one subset of securities satisfying a predetermined criteria, creating an open ended financial product having a fixed number of outstanding shares over a predetermined period of time and a portfolio comprising of securities within the subset of securities, identifying from the group of securities a revised subset of securities satisfying the predetermined criteria, changing the securities comprising the portfolio in response to the identifying of the revised subset of securities, determining in real time the price of the financial product based on a user-defined method of weighting the securities comprising the portfolio, and outputting an indication of the real time determined price of the financial product in a humanly readable format.(note abstract and see column 8 lines 11-51 and column 7 lines 7-24).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hunt to include instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post release stage; and the price determined based at least in part on the development stage of the item at a time of a trade taught by Kiron in order to produce a price that account for the creation phases of the product.

As per Claim 99, Hunt discloses wherein the item comprises a movie, and the price of the instrument in a prerelease stage is based at least in part on estimated box office revenues of the movie and in a release stage the price of the instrument is based at least in part on actual box office revenues of the movie. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 100, Hunt discloses wherein in a prerelease stage the price of the instrument is based at least in part on estimated revenues associated with the item and wherein in a release stage the price of the instrument is based at least in part on actual revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 101, Hunt discloses wherein the plurality of stages of development associated with the item comprises a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with each pre-release stage. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 102, Hunt discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 103, Hunt discloses wherein the instrument is offered in an initial offering and the price of the instrument is based at least in part on a number of shares issued in the initial offering for the instrument. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 104, Hunt discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line

5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 105, Hunt discloses wherein the item is a movie in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and a historic multiplier for total gross revenue.

As per Claim 106, Hunt discloses further determined based at least in part on a buy sell imbalance on between buy and sell orders for the instrument and at least one ghost trade in the instrument triggered automatically. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 107, Hunt discloses wherein the at least one ghost trade is a buy order if a buy probability constant associated with the instrument exceeds a randomly generated trade constant and the at least one ghost trade is a sell order if the buy probability constant associated with the instrument does not exceed the randomly generated trade constant. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 108, Hunt discloses wherein the price reflects a price increase or decrease applied to a previous price for the instrument based on a buy-sell imbalance between buy orders and sell orders for the instrument. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 109, Hunt discloses wherein the price increase or decreased is computed based at least in part on a security price increment constant. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 110, Hunt discloses wherein the price reflects a security break increment when the increase or decrease exceeds a security break threshold. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 111, Hunt discloses wherein trades in the instrument are executed in cycles, each cycle having a market price associated therewith, and wherein the price reflects an increase or decrease applied to the market price of the instrument for a previous cycle. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 112, Hunt discloses a system comprising at least one computing device having a memory associated therewith, the memory comprising software stored thereon that when executed performs a method comprising:
receiving at least one order to buy or sell a derivative financial instrument, executing a trade on the instrument at the determined price. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

Hunt fail to explicitly teach financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post-release stage determining a price for the instrument based at least in part on theitem being in a preprelease development stage of the item at a time of a trade.

However Kiron discloses identifying a group of securities, separating the group of securities into at least one subset of securities satisfying a predetermined criteria, creating an open ended financial product having a fixed number of outstanding shares over a predetermined period of time and a portfolio comprising of securities within the subset of securities, identifying from the group of securities a revised subset of securities satisfying the predetermined criteria, changing the securities comprising the

portfolio in response to the identifying of the revised subset of securities, determining in real time the price of the financial product based on a user-defined method of weighting the securities comprising the portfolio, and outputting an indication of the real time determined price of the financial product in a humanly readable format.(note abstract and see column 8 lines 11-51 and column 7 lines 7-24).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hunt to include financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post-release stage determining a price for the instrument based at least in part on the development stage of the item at a time of a trade; and taught by Kiron in order to produce a price that account for the creation phases of the product.

As per Claim 113, Hunt discloses wherein the item comprises a movie and the price of the instrument is based at least in part on estimated box office revenues of the movie in a pre-release stage and the price of the instrument is based at least in part on actual box office revenues of the movie in a release stage. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 114, Hunt discloses wherein the item has an undetermined release date, the method further comprising fixing the release date for the item after the execution of the trade(Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 115, Hunt discloses wherein in a prerelease stage the price of the instrument is based at least in part on estimated revenues associated with the item and wherein in a release stage the price of the instrument is based at least in part on actual revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5)

and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 116, Hunt discloses wherein the plurality of stages of development associated with the item comprise a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with the pre-release stage of the item (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 117, Hunt discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by ultiplying an initial price for the instrument by a development factor. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 118, Hunt discloses wherein the instrument is traded in an initial offering and the price of the instrument is based at least in part on a number of shares issued in the initial offering for the instrument. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 119, Hunt discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual
revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 120, Hunt discloses wherein the item is a movie and in a post-release stage the price for the instrument is based at least in part on an opening weekend box office gross revenue and a historic multiplier for total gross

revenue(Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 121, Hunt discloses further comprising triggering an automatic ghost trade for the instrument. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 122, Hunt discloses wherein triggering the automatic ghost trade comprises:
retrieving a buy probability constant; generating a
random trade constant;
placing a buy order when the buy probability constant exceeds the random trade constant and placing a sell order when the buy probability constant does not exceed the random trade constant. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 123, Hunt discloses wherein determining the price of the instrument comprises:
determining a buy-sell imbalance between buy orders and sell orders for the instrument; and computing a price increase or decrease for the instrument based on the buy-sell imbalance. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 124, Hunt discloses wherein the price of the instrument is increased or decreased incrementally based at least in part on a security price increment constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per Claim 125, Hunt discloses further comprising:
comparing a security break threshold to the computed price increase or decrease; and increasing or decreasing the price of the instrument based at least in part on a

security break increment when the increase or decrease exceeds the security
break threshold. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-
25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set
market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 126, Hunt discloses further comprising:
comparing a stock halt threshold to the computed price increase or decrease; and
halting trading when the computed price increase or decrease exceeds the stock
halt threshold. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25
and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set
market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 127, Hunt discloses wherein trades are executed in cycles each
cycle having a market price associated therewith and wherein the price of the
instrument is determined by increasing or decreasing the market price of a previous
cycle by the computed price increase or decrease. (Note abstract and see column 5
lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line
5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5
lines 17-40).

As per Claim 128, Hunt discloses further
comprising storing trade volume information and trade price information for each
trade order for a plurality of instruments. (Note abstract and see column 5 lines 15-40
and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and
executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines
17-40).

As per Claim 129, Hunt discloses wherein the item is at least one of a product, a
movie, and a service company. (Note abstract and see column 5 lines 15-40 and
column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing
a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 130, Hunt discloses a system comprising at least one computing
device having a memory associated therewith, the memory comprising software
stored thereon that when executed performs a method comprising:

receiving a request for information associated with at least one derivative financial instrument; and communicating a price for the at least one instrument in response to the request. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

 Hunt fail to explicitly teach instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post release stage and the price determined based at least in part on the item being in a pre-release development stage at a time of a trade.

     However Kiron discloses identifying a group of securities, separating the group of securities into at least one subset of securities satisfying a predetermined criteria, creating an open ended financial product having a fixed number of outstanding shares over a predetermined period of time and a portfolio comprising of securities within the subset of securities, identifying from the group of securities a revised subset of securities satisfying the predetermined criteria, changing the securities comprising the portfolio in response to the identifying of the revised subset of securities, determining in real time the price of the financial product based on a user-defined method of weighting the securities comprising the portfolio, and outputting an indication of the real time determined price of the financial product in a humanly readable format.(note abstract and see column 8 lines 11-51 and column 7 lines 7-24).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hunt to include teach instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post release stage and the price determined based at least in part on the development stage of the item at a time of a trade taught by Kiron in order to produce a price that account for the creation phases of the product.

     As per Claim 131, Hunt discloses wherein the item comprises a movie, and the price of the instrument is based at least in part on estimated box office revenues of

the movie in a pre-release stage and the price of the instrument is based at least in part on actual box office revenues of the movie in a release stage. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 132, Hunt discloses wherein the price of the instrument is based at least in part on estimated revenues associated with the item in a pre-release stage and wherein the price of the instrument is based at least in part on actual revenues associated with the item in a release stage. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 133, Hunt discloses wherein the plurality of stages of development associated with the item comprises a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with each pre-release stage. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 134, Hunt discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 135, Hunt discloses wherein the instrument is offered in an initial offering and the price of the instrument is based at least in part on a number of shares issued in the initial offering for the instrument. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4

line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 136, Hunt discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 137, Hunt discloses wherein the item is a movie and in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and a historic multiplier for total gross revenue. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 138, Hunt discloses the price of the instrument further determined based at least in part on a buysell imbalance on between buy and sell orders for the instrument and at least one ghost trade in the instrument triggered automatically. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 139, Hunt discloses wherein the at least one ghost trade is a buy order if a buy probability constant associated with the instrument exceeds a randomly generated trade constant and the at least one ghost trade is a sell order if the buy probability constant associated with the instrument does not exceed the randomly generated trade constant. (Note abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

As per Claim 140, Hunt discloses wherein the price reflects a price increase or decrease applied to a previous price for the instrument based on a buy-sell imbalance between buy orders and sell orders for the instrument. (Note abstract and

see column 5 lines 15-40 and column 14 lines 10-25 and see column 3 lines 55-65 and

column 4 line 5) and executing a trade at a set market price.(see column 3 lines 10-15

and column 5 lines 17-40).

   As per Claim 141, Hunt discloses wherein the price increase or decreased is

computed based at least in part on a security price increment constant. (Note

abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3

lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see

column 3 lines 10-15 and column 5 lines 17-40).

   As per Claim 142, Hunt discloses wherein the price reflects a security break

increment when the increase or decrease exceeds a security break threshold. (Note

abstract and see column 5 lines 15-40 and column 14 lines 10-25 and see column 3

lines 55-65 and column 4 line 5) and executing a trade at a set market price.(see

column 3 lines 10-15 and column 5 lines 17-40).

   As per Claim 143, Hunt discloses wherein trades in the instrument are

executed in cycles, each cycle having a market price associated therewith, and

wherein the price reflects an increase or decrease applied to the market price of

the instrument for a previous cycle. (Note abstract and see column 5 lines 15-40 and

column 14 lines 10-25 and see column 3 lines 55-65 and column 4 line 5) and executing

a trade at a set market price.(see column 3 lines 10-15 and column 5 lines 17-40).

Conclusion
RESPONSE TO ARGUMENTS

6.   Applicant's arguments filed 3/4/08 has been fully considered but they are moot

in view of new grounds of rejections.

   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Clement B. Graham whose telephone number is 571-

272-6795. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantzy Poinvil/
Primary Examiner, Art Unit 3696

CG
Jan 19, 2009